

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRTIETH REGION

Milwaukee, Wisconsin

BEVERLY ENTERPRISES-WISCONSIN, INC.,
D/B/A KILBOURN HEALTH CARE CENTER¹

Employer

and

Case 30-RC-6159
(Formerly 9-RC-17327)

DISTRICT 1199W/UNITED PROFESSIONALS FOR
QUALITY HEALTH CARE, SERVICE EMPLOYEES
INTERNATIONAL UNION

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on November 5 and 12, 1999 before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board. Thereafter on November 16, 1999 by order of the General Counsel, this case was transferred to and continued in Region 9 as Case 9-RC-17327 for decision. On November 29, 1999, the Regional Director for Region 9 issued an Order Reopening the Record and Direction of Further Hearing. On December 3, 1999, the hearing officer from Region 30 issued an Order Re-Opening Hearing, that was later canceled by Order of December 10, 1999 pending resolution of an unfair labor practice charge filed in Case 30-CB-4307. On February 2, 2000, the hearing officer issued an Order Re-Opening Hearing and Notice of Hearing. On February 4, 2000, the General Counsel issued an order

¹ The name of the Employer appears as amended at hearing.

transferring the case from Region 9 to Region 30. Thereafter, the hearing was continued and held on February 9 and 10, 2000 before Region 30.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,² the undersigned finds:

1. The hearing officers' rulings made at the hearings are free from prejudicial error and are hereby affirmed.³
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

² Timely briefs (both the initial briefs and supplemental briefs from the continuation of the hearing) from the Employer and Petitioner have been received and duly considered.

³ **SPECIAL APPEAL BY EMPLOYER**

At the hearing, the Employer's counsel filed a special appeal to have the hearing re-opened to permit further questioning of LPN Dorothy Moore for the purpose of adducing evidence concerning her credibility as a witness, and the hearing officer's rejection of the Employer's offer of proof with respect to her credibility. The special appeal was filed as Exhibit 64, which identifies the witness as Nathalie Walton, not Dorothy Moore. The Petitioner's counsel filed a motion to dismiss the special appeal on February 29, 2000, noting that the appeal named Walton of whom the Employer had adequate opportunity to cross-examine. The Employer Counsel's supplemental brief at page 19, footnote 3 is consistent with the record that the intent of the appeal concerns the rejected offer of proof for employee Dorothy Moore. I am denying Petitioner's counsel's motion to dismiss the special appeal as it appears obvious from the record and the Employer's supplemental brief that the focus of its appeal concerns Moore. The Employer, by its counsel, requests that the Hearing Officer's ruling be reversed and that the hearing be reopened to permit Employer to cross examine Moore with respect to facts relating to her credibility as a witness and that the Employer's offer of proof be accepted on this matter. The Employer contends in its offer of proof that Moore has been terminated by the Employer over which action an unfair labor practice charge has been filed. Counsel wishes to question Moore as to "...whether she is biased against the company in such a way that that testimony would be incorrect...but also biased because she has been encouraged by the union in this case to shade her testimony," concerning her supervisory duties (Tr. 626).

I am denying the Employer's special appeal to re-open the record to cross examine Dorothy Moore as to her credibility as a witness and reaffirming the denial of its offer of proof. Further examination of Moore would inevitably involve exploration of significant unfair labor practice issues not properly raised in an unfair labor practice proceeding. I further conclude that the Employer had sufficient opportunity to cross-examine Moore, and the record speaks for itself as to the content of her testimony as compared with the other union witnesses whose testimony the Employer does not dispute; i.e., Flowers and Walton. Further, representation hearings are considered investigatory, rather than adversary; and credibility findings are not usually made in decisions and directions of election. *Reeves Brothers, Inc.*, 277 NLRB 1568, 1578 (1986).

The Employer at Tr. 346 stated that under the principles of fundamental due process he wanted to cross examine Eddie Evans to bring out its assertion that Evans was not telling the truth. The Employer at Tr. 347 and in its initial brief filed November 22, 1999, at page 33, footnote 11, contends that a credibility determination with respect to the testimony of union witness Eddie Evans be made, and that Evans' testimony be rejected in its entirety. As the hearing officer correctly indicated to the Employer's counsel, this is a non-adversarial proceeding in which credibility resolutions are typically not made. The Employer had adequate opportunity to cross examine Evans and the record speaks for itself. I do not reject Evans' testimony.

3. The Labor Organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Licensed Practical Nurses employed by the Employer at its Milwaukee, Wisconsin facility; but excluding all confidential employees, guards and supervisors as defined in the Act, and all other employees.

The issue is whether the Licensed Practical Nurses (LPNs) are supervisors within the meaning of Section 2(11) of the Act. The Employer contends that the LPNs function as shift supervisors and team leaders and as such are statutory supervisors.

FACTS

The Employer operates a skilled nursing facility at its Milwaukee, Wisconsin location. The 90-bed facility has three patient floors or units. The first floor is a skilled floor unit with independent residents and a 29-bed capacity. The second floor is a skilled resident care unit with a 28-bed capacity that includes 12 Medicare beds. The third floor is a skilled floor with a 33 bed capacity. The Union currently has a collective-bargaining agreement with the Employer covering a unit that includes certified nursing assistants (herein CNAs). There is no history of collective bargaining for any of the employees sought herein.

Catherine Hackney has been the nursing home administrator or executive director at this facility since August 21, 1997, and oversees all of the facility's operations. Reporting to the administrator are: the business office manager, environmental director, social services director,

medical records coordinator, director of activities, dietary director, administrative assistant, director of laundry and housekeeping, dietary director, and the director of nursing (herein DON), Janice Fields.⁴ The DON is responsible for the nursing department. She possesses and has exercised the authority to interview, hire and discipline employees. Based upon the foregoing, I find that DON Fields is a statutory supervisor under Section 2(11) of the Act. Reporting to DON Fields are three assistant directors of nursing (herein ADONs), Heidi Staszak, Sandra Fleming,⁵ and Rakell Maroney. The ADONs' job description (Er. Exh. 53) describes their supervisory responsibilities that includes the following: assisting the DON in managing nursing care, including monitoring the staff for the quality of care they are providing the residents; supervising the licensed staff; and filling in for the DON in her absence and assuming the authority to discipline, hire or fire employees. The parties stipulated that the ADONs are statutory supervisors under the Act inasmuch as they have the authority to and have disciplined employees. In addition to the ADONs, there are currently two other RNs employed by the Employer; Yolanda White as a weekend shift supervisor, and Ernestine Hill (a former ADON) as an on-call RN.⁶ There are no on-call LPNs. There are five LPNs and 30 CNAs. The Employer utilizes the services of temporary or agency employment services to obtain additional RNs, LPNs and CNAs as needed to staff the units (Er. Exhs. 45, 46, 47, 48).

The Employer operates with three shifts: the day shift from 7 a.m. to 3 p.m., the P.M. shift from 3 p.m. to 11 p.m., and the night (or NOC) shift from 11 p.m. to 7 a.m. The DON is at the facility during the first shift. There is a day supervisor, a P.M. supervisor and a night supervisor, positions filled by a ADON, another RN or an LPN, and occasionally an agency pool

⁴ Fields has been the DON at this facility for about 2 years.

⁵ Fleming was an ADON, but for personal reasons she stepped down from that position (date unknown). She continues to work as a night shift supervisor.

⁶ RNs who are mentioned in the record, but no longer employed by the Employer are Kate Pramang, Lynn Volansky, Robert Fuchs, Barbara Cotton, and a Ms. Farmer. Regarding RNs Hill and White, the Union has not sought the RNs; and accordingly, they are not included in the proposed unit.

nurse (Er. Exh. 48). There is a team leader on each shift for each floor which positions are filled either by an RN or LPN, who are employees of the Employer or agency pool nurses. However, both P.M. and night supervisors may also perform work as a team leader on one or more floors during their shift. When an LPN performs the work as a PM or night shift supervisor, she/he is the highest ranking individual in the facility. Typically, the CNAs are distributed as follows: one CNA for the first floor, two to three for the second floor, and three for the third floor for each shift.⁷ During the PM and night shifts, the DON or one of the ADONs are on call. The DON is on 24-hour call.

There are 12 beds on the second floor for Medicare. The Medicare/Medicaid resident/patients have medical conditions requiring a skilled level of care provided by a nurse and other professionals to meet their needs. Certain staffing levels are required by law to care for Medicare patients. The State also has certain codes, requirements and statutes to be followed, and the facility is monitored annually to make sure the Employer meets those codes. DON Fields informs the employees about these codes and requirements through her monthly nursing and CNA meetings. The ADONs and team leaders review some of those items in their weekly unit meetings with the staff. Each department manager is responsible for making sure that these codes are enforced.

SHIFT SUPERVISOR ISSUE

ADONs Staszak, Fleming and Maroney and RNs White and Hill serve as shift supervisors along with LPNs Nathalie Walton, Stella Flowers and Betty Stanford. These LPNs also have worked as team leaders which issue will be discussed below. As previously noted, the RN or LPN shift supervisor is the highest ranking individual in the facility on the second and third shifts, and on weekends. According to DON Fields, at those times, the shift supervisor is

⁷ On the night shift, there usually are only two CNAs on the third floor.

responsible for the overall direction of the facility. The day supervisor is not the highest ranking supervisor on the first shift during the week because the DON is on duty. On average, one of the LPNs works as the shift supervisor about twice a week on a regular basis. This occurs more often if the scheduled RN is not on duty. On the third shift, the shift supervisor is responsible for the overall house supervision and team leader tasks assigned on two of the more independent units (first or second floor). When an LPN serves as a house supervisor, they receive a pay differential ranging from 50 cents to a dollar an hour. They receive \$1 an hour more if they are the only LPN in the building on the night shift, since she/he function both as the house supervisor and the team leader for the entire building. If there is another LPN/team leader in the building, the shift supervisor does not have the full responsibility for the building and would then receive only 50 cents an hour more.

The Employer's shift supervisors and team leaders are disbursed among the shifts as follows:⁸

Day Shift: Shift supervisors RNs: DON Fields; ADONs Fleming and Staszak, with RN White on weekends.

Team Leaders LPNs Moore and Evans

PM Shift: Shift supervisors RNs: ADONs Maroney and Staszak, and RN Hill (on call)
Shift supervisor LPN Walton

Night Shift: Shift supervisors RN Hill (on call), and LPNs Flowers and Stanford

Agency/pool RNs and LPNs also serve as shift supervisors and/or team leaders. DON Fields testified that these agency nurses give medications, do treatments, make calls to physicians to get new orders, and do charting of the residents. They have the responsibility to oversee CNAs on the unit they are working and to instruct them in providing care to the residents. They have the ability to change the CNAs' assignments, add other specific

⁸ The outside agency pool nurses fill in for days when one or more of the Employer's shift supervisors and team leaders are not scheduled to work.

assignments, and reprimand them if they are doing something harmful to a resident or leaving the floor when not authorized. If they are the only shift supervisor in the building, they have the same authority as the Employer's own supervisors.

On each unit or floor, the Employer maintains a policy book or "red manual." It details the common policies in the building and describes how to handle various situations that arise. Each resident has a detailed care plan that is prepared by an interdisciplinary team (social services activities, dietary and nursing), that includes the LPNs, RNs and CNAs.

Independent Judgment and Professional Responsibility:

Connie Rebey, the Employer's Community Center's Division Director of Human Resources who has multi-facilities responsibilities, testified that she conducted two training sessions at the Employer's facility in February and August 1999 with the RNs and LPNs, all of whom were either shift supervisors or team leaders as reflected by the sign in sheets (Er. Exhs. 40 and 41). Rebey and DON Fields testified they discussed with the licensed staff their duties including: the assignment of work to the CNAs; the correction of work performance as the first step in the problem solving process; the complaints and grievance procedure; the work performance and annual performance evaluation process of the CNAs; and disciplinary procedures for verbal and written warnings. At each of the meetings, the assembled employees were told that they were first line supervisors and they were provided with their job descriptions, which were reviewed (February, Er. Exhs. 1-4; August, Er. Exhs. 15-18). At the August 1999 meeting, the Employer also told the employees that they had that authority to assign hours, breaks and meal periods to the CNAs to ensure coverage on the floor. The RNs and LPNs were told at both meetings that they had the same supervisory authority.

LPN shift supervisors Stella Flowers and Dorothy Moore testified that they attended the February 1999 training meeting and they, along with Eddie Evans⁹ testified attending the August 1999 training meeting. At both meetings their job descriptions were reviewed and signed by them (Er. Exhs. 1, 4, 15, 17, 18).¹⁰ At these meetings, the Employer went over their responsibility and authority in the disciplinary, evaluation, and employee complaint resolution processes; the Employer's expectation of them as a member of the management team; and their supervisory duties and authority applied to RNs as well as to LPNs. They were told that they were front line-supervisors.

DON Fields testified that additional supervisory training for RNs and LPNs was conducted by Jane Brackett, nurse consultant for the Employer for its Milwaukee group of facilities in April, May and June 1998. The parties stipulated that Er. Exh. 39 is a sign-in sheet reflecting that RNs and LPNs from the Employer's Kilbourn Health Care Center facility who attended the three sessions. Attendance was not mandatory. Topics discussed included supervisory responsibilities for training, teaching and assigning daily tasks, relaying company policies and management directives to those that they supervised, the administration of their progressive disciplinary policy, completion of performance evaluations, and procedures to utilize in the conflict resolution process.

DON Fields testified concerning the supervisory duties of the LPNs. It appears that the RNs and LPNs have similar supervisory responsibilities when acting as shift supervisors. The only difference in duties between LPNs and RNs are those based upon licensure; i.e., medical care that includes IV's and those procedures of a higher skilled nature that RNs provide.

⁹ Evans testified that he had difficulty recalling what was said by Rebey at the August meeting but admitted receiving his job description.

¹⁰ Both Evans and Moore said they signed their job descriptions at the meetings, but took them home to read later. Moore testified she disagreed with what was expected of her pursuant to that job description. Both testified that they did not subsequently raise any objection to or dispute its contents to the Employer.

LPN shift supervisors Walton and Flowers testified that their typical day begins with taking reports from the out-going nurses to see who is on staff and the status of the residents. During their shift, they make the rounds, checking on the condition of the residents, they will pass the medications, prepare assessments of the residents, and complete charting work on the residents.

DON Fields testified that the initial regular work schedule is set up by the scheduler (who works first shift). The scheduler initially determines the number of LPNs or CNAs scheduled to work on a particular day and shift. This information is recorded each day on CNA assignment sheets that are prepared for each unit. It reflects the names of the CNAs, the resident rooms assigned to them, standardized additional duties to perform,¹¹ and space for further specialized instructions (Er. Exh. 19). These sheets are modified by the LPN to add the specialized care items for their assigned residents, such as providing spanko boots or disposable briefs. Upon determining from her own observation in monitoring the residents directly or from information given to her/him from the CNA that there was a problem with the resident's condition, the LPN has the independent authority to contact the resident's physician. DON Fields testified that the LPNs make rounds on their units to observe the work performed by the CNAs, correcting them if it is done improperly. If a CNA failed to follow any of the instructions on the assignment sheet, DON Fields testified the LPN had the authority to initiate disciplinary procedures (discussed below) without seeking higher authority. The LPNs and RNs participate with the DON as team members in making decisions as to the nature of care for the residents. Examples include if a resident has incontinency problems or there are potential areas of skin breakdown, the team members make a determination on how to deal with these situations.

¹¹ The pre-printed duties include: passing a.m. and p.m. nourishments, checking/cleaning tub and day rooms, and distributing fresh water.

DON Fields testified that the RNs and LPNs have the authority to make adjustments on the CNAs' timecards, as their authorizing supervisor without obtaining higher management approval by signing a clock adjustment slip (Er. Exh. 28).¹² Such adjustments include verifying the CNAs start/end times or break times. Shift supervisor Walton confirmed that she initialed the clock adjustment slips based on her first hand knowledge of when that employee was in the building (Tr. 253/254).

DON Fields testified that the LPNs have the responsibility to complete accidents reports of injured employees and have the authority to send them to a hospital for treatment, all without higher management approval. The Employer provided four examples from three former LPN supervisors completing and signing a supervisor's accident investigation in 1998. Additionally, an authorization for hospitalization treatment form was completed by former LPN supervisor Letha Carr in 1998 (Er. Exh. 26).

Assignment and Direction of Work:

The Employer through the DON testified that shift supervisors have ability to switch a CNA from one unit to another to meet the needs of the facility. In particular, LPN supervisors on 2nd and third shifts have authority to switch CNAs from one floor to another and they, as well as team leaders, can independently give assignments, add duties or change assignments to CNAs. These changes include giving CNAs additional patients to take care of, reducing the number of residents assigned to a particular CNA, and specifying care instructions for a resident. In the event of a staffing shortage, LPN shift supervisors can call any of the employees in that same category (i.e., CNAs) to see if they can come in to fill in the vacancy or ask an employee from one shift to stay over to fill that vacancy (thus authorizing overtime). According to DON Fields, they use their discretion on whether to call the outside pool registry to attempt to fill the vacancy,

¹² The timecards were initialed by shift supervisors Walton and Flowers, and team leader Moore.

by asking staff to stay over or call staff in, or to re-allocate the work among present staff, without having to check with any higher authority first. LPN team leaders do not have the authority to call the outside agency pool registry.

LPN shift supervisor Flowers testified that she can assess the work and staffing situation and re-assign CNAs to different floors or re-divide the workload among them as she feels necessary. She will call someone in higher management to convey to them her assessment of the situation and the plan of action she intends to take, and then she carries it out. Flowers stated that it is up to her how to re-divide the work. Flowers testified that she has successfully made a recommendation for a permanent transfer of an CNA. She recalled one CNA did not care to work on a particular floor, and Flowers asked management that she be transferred, and the CNA was transferred. LPN shift supervisor Walton testified that she has not permanently changed the work schedule of an employee.

Both LPN shift supervisors Walton and Flowers confirmed that when they are short of staff, they sometimes ask an employee to stay over from the previous shift to continue working (resulting in overtime) without authorization from higher management. Walton stated that she also calls from a list of employees to ask them to come in for the shift, and can do so without authorization from higher management. Employees, however, can refuse to work an extra shift. Flowers stated she must get authorization from the RN on call or the DON before she can offer a bonus to get an employee to come in. Contrary to DON Fields, Walton and Flowers stated, however, that they get approval from a RN manager or human resources manager before they call the outside agency pool to supply an employee. Both Walton and Flowers stated that they have the authority to and have signed off on the outside agency pool employees agency work slips to document the number of hours that the pool employee worked (Er. Exh. 9).

Discipline:

The Employer's progressive disciplinary system is as follows: Category I offenses are the most serious and an employee is subject to immediate suspension, pending investigation for discharge. For Category II offenses, an employee is spoken with or counseled at the first incident, the next step is a written warning, then if the conduct re-occurs, there are two more written warnings before the fourth step, which is suspension, pending investigation that could lead to discharge. As noted above, the Employer told the RNs and LPNs at the training meetings in February and August 1999 that they were charge nurses and supervisors and as such had the authority to independently issue oral and written warnings. The Employer provided various examples of written warnings completed in whole or in part by shift supervisors. The most recent written warning issued August 4, 1999 by DON Fields to CNA Wright over work performance issues relating to patient care, Er. Exh. 6. Attached to the warning is a handwritten narrative completed by LPN staff supervisor Dawson (who is no longer employed). However, Dawson's narrative contains no recommendation for discipline, but does contain the comment that Wright "needed to focus" on her job. DON Fields testified that Dawson verbally indicated to Fields that Wright needed to be counseled if not fired, that she needed to be focused and written up.¹³ According to Fields, based upon that comment, Fields gave Wright a written warning without further investigation. The next most recent example is a first written warning (Er. Exh. 10, time card inaccuracies) from LPN shift supervisor Georgia Erkins to a CNA in June 1996, which discipline was also signed by RN Joyce Wilson. The remaining written warnings identified as Er. Exhs. 7, 8, 9 issued between 1989 and 1994 are remote in time and are not probative.

¹³ Dawson did not testify at the hearing.

LPN shift supervisor Flowers issued a verbal counseling to a CNA (Er. Exh. 11) on August 4, 1999 concerning an incident with a resident who drank some soap. The document is titled “1:1 Verbal Counseling” but contains no references that future infractions would result in further discipline or that it was a verbal warning. However, Flowers testified that while she had reported the incident to the on-coming RN manager, Flowers did not think the CNA should be written up. Flowers testified that the RN manager (unnamed) told her that she had to write him up, and if she did not feel like writing the CNA up, to write a verbal warning, which she did. Flowers admitted that if a CNA on her team is not following rules or is engaged in misconduct, she can, using her discretion and judgment, give employees verbal or written reprimands without asking for permission; and that she had the authority, without checking with anyone, to suspend employees for refusing to follow an order or acting in an improper manner towards her.

The Employer provided more recent examples of discipline given by its RN nursing staff that were issued after this hearing initially closed on November 12, 1999, but before it reopened on February 9, 2000. With one exception, they are all individual in-service/counseling records containing the admonition that future violations could result in termination or discipline. No documents were issued by any LPNs. Two of the documents were issued by ADONs Maroney (Er. Exh. 54, incomplete documentation, on February 2, 2000) and Staszak (Er. Exh. 58, procedure for removing meds from contingency to LPN Evans, dated January 21, 2000). Staszak’s discipline contains no admonitions of future discipline. Employer Exhs. 55 through 57¹⁴ involving employees who were found sleeping on the job were issued on January 17, 2000 by RN shift supervisor Fleming, who by this time was no longer a ADON according to the Employer. According to DON Fields at the time that this proceeding opened for hearing on

¹⁴ As noted on the record, (Tr. 512), it appears that Fleming wrote out the identical text for the body of each document, with changes only as to the employees’ names and signatures.

November 5, Fleming was an ADON but not by the time the hearing reopened on February 9, 2000.

Evaluation of Employees:

At the in-service meetings held in 1999, described above, the DON and Rebey told the RNs and LPNs that as charge nurse supervisors, they are responsible to independently fill out and assist in the assessment and preparation of annual evaluations for CNAs they supervise. However, DON Fields testified that since she has been at the Employer, no one, RN or LPN, has done an evaluation of any employee. While they may be empowered by their job description(s) with such responsibility and authority, there is no evidence that any RN or LPN has completed any employee evaluation forms.

Adjustment of Grievances:

Again at the in-service meetings held in 1999, DON Fields and Rebey told the participants that as charge nurse supervisors they are responsible for attempting to resolve, through their problem-solving procedures, associate problems, complaints and grievances (Er. Exhs. 1, 15-18). LPN shift supervisor Walton testified that she has not been involved in resolving a grievance that may have been filed, and has never had a grievance from anyone on her shift. Walton stated that she would imagine that she has the authority to resolve it. There was no other evidence that any of the RNs or LPNs shift supervisors have been involved in the adjustment of grievances.

TEAM LEADERS ISSUE

LPNs Dorothy Moore and Eddie Evans are full-time team leaders. The three LPN shift supervisors (Walton, Flowers and Stanford) work as team leaders in conjunction with their shift supervisor role. Again, the Employer supplements its LPN staff who serve as team leaders with nurses from outside employment agencies to perform those functions as well. The team leaders

report to the shift supervisor. During the first shift, if an RN is present, three LPNs are scheduled to work, one on each of the floors as a team leader. The distribution of the CNAs is described above. There is no indication in the record that team leaders receive any premium pay. DON Fields likewise told CNAs at a unit meeting (Er. Exh. 23) that, inter alia, LPN team leaders are their first line supervisors who are accountable for evaluating CNAs, making out assignment sheets and performing necessary counselings and discipline if jobs are not being performed at an appropriate level.

LPN Team Leader Moore testified that she recalled attending a training session in May 1998 at an airport, where they did role playing. She said she did not remember much of what was said about her role as a supervisor but did recall discussions on how to handle difficult patients and family members.

Independent Judgment and Professional Responsibility:

The Employer asserts that the team leaders demonstrate independent judgment and professional responsibility similar to that of the shift supervisor. Team Leader Evans generally works on the first shift on the second floor with two or three CNAs. The DON and one or more RN shift supervisors, usually one of the ADONs, also work first shift, to supervise all three floors. On Mondays, Evans reviews the assignment sheet for the CNAs and identifies residents assigned to each CNA. On Wednesdays, he regularly rotates the CNAs to different groups of residents. He also counts the narcotics with the nurse who is going off the floor, and passes out medications. Evans testified that he is responsible for watching the CNAs perform their duties and to correct them if they are doing the job incorrectly. Like shift supervisors, team leaders initial time cards of the outside agency pool employees to confirm the accuracy of reported times.

Assignment and Direction of Work:

According to DON Fields, team leaders, like LPN supervisors, can independently add assignments or additional duties to CNAs as described above under the shift supervisors discussion. Such examples include specific care instructions for a resident or the need to monitor medical conditions, or shifting the patient load to equalize the work without consultation with the shift supervisor. According to DON Fields, if a CNA fails to follow the instructions, the team leader has the authority to issue verbal or written reprimands without having to first check with any higher authority. The Employer asserts that team leaders assign or alter break and meal times to the CNAs on their floors, to ensure there is adequate staffing on their unit to meet the needs of residents (Er. Exhs. 15-19) without checking with higher management; or they can grant an employee's request to take off early or go home for a family emergency. However, LPN team leader Moore described a more democratic procedure wherein she asked the CNAs when they wanted to take a break or worked out a mutual agreement as to when the CNAs and Moore would take their respective breaks.

Both team leaders Evans and Moore testified that if they were short-handed on first shift, they called a supervisor or the scheduler who took care of the shortage. The incoming CNA would then be assigned the duties of the vacant position. Evans stated he never permanently re-assigned anyone to a different floor. Moore stated she reassigned a CNA/orderly from one floor to another, but only after obtaining a supervisor's authorization.

Discipline:

DON Fields stated that team leaders have same authority to issue discipline as discussed above for the shift supervisors. However, the Employer introduced no exhibits demonstrating that they exercised that authority. LPN Team Leader Eddie Evans testified that he has not imposed discipline on anyone. He said if an employee refused to do what he told them, he would

talk with an ADON and they both would talk to person in the office. LPN Team Leader Moore testified she has never disciplined a CNA, nor has she been involved in a verbal counseling, made any recommendation concerning the discipline of a CNA, nor completed an associate memorandum, verbal counseling form or written warning. On cross examination, Moore affirmed that she could write up an employee on her own authority (such as for a CNA refusing to obey one of her instructions), but the final decision would be up to the supervisors.

Evaluation of Employees:

While the Employer asserts that the team leaders, like the shift supervisors, are empowered by their job descriptions with the responsibility and authority to evaluate the work of the CNAs, there is no evidence that they have executed that authority. The Employer's Exhs. 33-36 of CNA evaluations prepared by LPNs date from 1989 to 1995 and are remote in time. In any event, DON Fields testified that since she has been at the Employer, no one, RN or LPN has done an evaluation of employees.

Adjustment of Grievances:

DON Fields testified that all RNs and LPNs, including team leaders, are responsible for attempting to resolve, through their problem-solving procedures, associate problems, complaints and grievances (Er. Exh. 1). However, Team Leader Evans testified that he has never been involved in the grievance process and that he had not received any training on the collective-bargaining agreement between Employer and SEIU Local 150.

ANALYSIS AND CONCLUSION

Section 2(11) of the Act defines a supervisor as follows:

[A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Following *NLRB v. Health Care & Retirement Corp. of America*, 511 U.S. 571 (1994), the Board restated the applicable principles for determining supervisory status in the health care industry. The Board noted:

In enacting Section 2(11) of the Act, Congress distinguished between true supervisors who are vested with “genuine management prerogatives,” and “straw bosses, lead men, and set-up men” who are protected by the Act even though they perform “minor supervisory duties.” *NLRB v. Bell Aerospace Co.* 416 U.S. 267, 280-281 (1974) (quoting S. Rep. No. 105, 80th Cong., 1st Sess., 4 (1947)). Senate Rep. No. 105 also stated that the committee took “great care” that employees excluded from the coverage of the Act “be truly supervisory” and that the amendment excluded only “the supervisor vested with such management prerogatives as the right to hire or fire, discipline, or make effective recommendations with respect to such actions.” NLRB Legislative History of the Labor Management Relations Act of 1947, 410. “Responsibility to direct” was added to the Senate bill shortly before its enactment by Senator Flanders, who explained that it was added to include “essential managerial duties” not otherwise covered by other indicia. Leg. Hist. At 1303. *Providence Hospital*, 320 NLRB 717, 725. (1995)

A person need only possess one of the specific criteria listed, or the authority to effectively recommend, so long as the performance of that function is not routine but requires the use of independent judgment. *Ten Broeck Commons*, 320 NLRB 806 (1996). The above cases require the application of the Board’s traditional analysis in determining whether the LPNs are statutory supervisors. Accordingly, I need to determine whether the LPNs herein exercise “true supervisory power.” In a decision adopted by the Board,¹⁵ an administrative law judge fairly described the task:

Actual existence of true supervisory power is to be distinguished from abstract, theoretical, or rule book authority. It is well established that a rank-and-file employee cannot be transformed into a supervisor merely by investing him or her with a “title and theoretical power to perform one or more of the enumerated functions.” *NLRB v. Southern Bleachery & Print Works*, 257 F.2d 235, 239 (4th Cir. 1958). Cert. Denied 359 U.S. 911 (1959). That is relevant is the actual authority possessed and not the conclusionary assertions of witnesses. And while the enumerated powers listed in Section 2(11) of the Act are to be read in the disjunctive, Section 2(11) also “states the requirement of independence of

¹⁵ *Amperage Electric, Inc.*, 301 NLRB 5, 13 (1991).

judgment in the conjunctive with what goes before.” *Poultry Enterprises v. NLRB*, 216 F.2d 798, 802 (5th Cir. 1954). Thus, the individual must consistently display true independent judgment in performing one or more of the enumerated functions in Section 2(11) of the Act. The performance of some supervisory tasks in a merely “routine,” “clerical,” “perfunctory” or “sporadic” manner does not elevate rank-and-file employee into the supervisory ranks. *NLRB v. Security Guard Service*, 384 F.2d 143, 146-149 (5th Cir. 1967). Nor will the existence of independent judgment alone suffice; for “the decisive question is whether [the individual involved] has been found to possess authority to use [his or her] independent judgment with respect to the exercise [by him or her] of some one or more of the specific authorities listed in Section 2(11) of the Act. See *NLRB v. Brown & Sharpe Mfg. Co.*, 169 F.2d 331, 334 (1st Cir. 1948). In short, “some kinship to management, some sympathetic relationship between employer and employee, must exist before the latter becomes a supervisor of the former. “*NLRB v. Security Guard Service*, supra.

Additionally, providing someone with a title is not dispositive of supervisory status. *Polynesian Hospitality Tours*, 297 NLRB 228 (1989). Under Board precedent, the burden of establishing supervisory status is on the party seeking to exclude the individual as a supervisor. *Bennett Industries Inc.*, 313 NLRB 1363 (1994). Mere assertions of authority are not sufficient to establish supervisory status. As stated in *Chevron U.S.A.*, 309 NLRB 59, 62(1992):

[T]he Act requires “evidence of actual supervisory authority visibly translated into tangible examples demonstrating the existence of such authority.” *Oil Workers v. NLRB*, 445 F.2d 237, 343 (D.C. Cir. 1971). Although “[a] supervisor may have potential powers,...theoretical or paper power will not suffice. Tables of organization and job descriptions do not vest powers.” *Id.* At 243....Additionally, the evidence must “fairly” show that “the alleged supervisor knew of his authority to exercise” the supervisory power. *NLRB v. Tio Pepe, Inc.*, 629 F.2d 964, 969 (4th Cir., 1980). (Alterations in original) (some citations omitted).

Furthermore, the record must also show that the “individual[s] in question consistently display true independent judgment in performing one or more of the enumerated functions in Section 2(11) of the Act.” *Amperage Electric, Inc.*, 301 NLRB 5, 13 (1991).

Independent Judgment and Professional Responsibility:

The Employer asserts that all five LPNs (including the discharged Moore) who perform work as either shift supervisors or team leaders received extensive training along with the RNs in

1998 and 1999 as to their roles as front-line supervisors and their supervisory authority as detailed in the job descriptions given them in February and August 1999. As noted above, the LPNs generally recall the discussions to varying degrees and admit signing the respective job descriptions distributed at those meetings.

The Employer asserts supervisory status relying upon the time card adjustments made by all the LPNs. The record reflects that Walton, Moore and Evans have initialed either time clock adjustment forms or signed time cards of the outside agency pool employees to accurately reflect the time actually worked by these individuals. I conclude that this function is routine and clerical in nature and is not an exercise of independent judgment.

Another factor relied on to support supervisory status of the LPNs, is that the LPN shift supervisors have the responsibility to complete accident reports of injured employees and the authority to send employees to a hospital for treatment. The examples provided in Exh. 26 were from 1998. The first four forms of the supervisor's accident investigation report provide for the signature of administrator, one of which is signed by administrator Hackney. As Fields testified, the forms are completed to indicate that an employee was injured, to gather the facts and circumstances of the accident, and make a determine if any further medical action is necessary. The workers compensation form is completed to report a work-related injury to the Employer's workers compensation division. Again, the forms are a routine reporting of such accidents, and clerical in nature. In any event, the accident reports are subject to signature of the administrator.

The Employer asserts that LPN shift supervisors are statutory supervisors because they have exercised their authority to permit CNAs to leave work early for personal reasons, and do so without the need for prior authorization. I find the one example provided with LPN shift supervisor Walton's testimony (TR. 277-278) to be isolated. To the extent that the LPNs send home CNAs who are ill, little discretion is involved because the need to take that action is

obvious, and they would be required to permit it. *Evangeline of Natchitoches, Inc.*, 323 NLRB 223 (1997).

In addition, on the first shift, the DON and one or more ADONs are present. There is an on-call RN for the second and third shifts, and the DON is on 24-hour call. As testified by LPN shift supervisors Walton and Flowers who work P.M. and night shifts, respectively, they contact the on-call RN or the DON before offering bonuses to get employees to work additional shifts or before calling the outside-agency pool for additional employees. There is also the “red manual” on each floor detailing the Employer’s policies and how they are to be administered.

Commenting on the absence of a statutory supervisor on the P.M. and night shifts, the administrative law judge in *Washington Nursing Home*, 321 NLRB 366, 381 (1996) concluded:

The fact that the charge nurses are the highest ranking individuals on site during most of the second and third shifts is some indication as to the likelihood of supervisory status. It is negated, however, by the fact that Respondents policy manuals give detailed instructions covering most situations. Moreover, during those primarily quiet hours, admitted supervisors are on call and immediately available by telephone. *Waverly-Cedar Falls Health Care*, supra. [297 NLRB 390 (1989)]. and *Phelps Community Medical Center*, supra. [295 NLRB 486 (1989)]. It cannot support a finding of such status where the statutory indicia are lacking. As the Board has recently stated: “[T]he Act does not state or fairly imply that the highest ranking employee on a shift is necessarily a supervisor.” *Northcrest Nursing Home*, 313 NLRB 491, 499 (1993)

Assignment and Direction of Work:

The Employer asserts that shift supervisors and team leaders, in their supervisory capacity, have the ability to, and have, switched CNAs from one unit to another, altered the work assignments of CNAs, determined their break times, and resolved staffing shortages by finding replacements. The work schedule is established by the first shift scheduler who makes the determinations of the number of LPNs and CNAs required to work each day and shift. The assignment sheets may be adjusted to equalize the work load of the CNAs as testified by Flowers. This includes the ability to transfer CNAs to other units as staffing needs necessitate.

The evidence shows that adjustments to the CNA break times made by the LPNs are routine in nature to ensure coverage on the unit. Such assignment of work that is routine or involves technical aspects of patient care and does not require independent judgment and does not show that LPNs possess statutory supervisory authority. *Evangeline of Natchitoches*, supra at 224; *Providence Hospital*, 320 NLRB 717 (1996) enfd. 121 F3d 548 (9th Cir. 1997).

The Employer asserts that the ability to temporarily transfer CNAs among units confers supervisory status on LPNs, relying on *Pine Manor*, 270 NLRB 1008, 1009 (1984). *Pine Manor* is distinguishable from the instant proceeding because the Board found the charge nurses statutory supervisors, inter alia, for other reasons including that they prepare probationary employee evaluations and effectively recommend retention or termination of those employees as well as recommended wage increases. The Employer also relies on *Albany Medical Center*, 273 NLRB 485 (1984) and *Northwoods Manor, Inc.*, 260 NLRB 854, 855 (1982) where the Board found the RN and LPN charge nurses to be supervisors as they possessed the authority to request employees to work overtime and initial time cards. Unlike the instant case, the Board also found the disputed RNs and LPNs prepared written evaluations of nurses that were given substantial weight in determining wage increases and bonuses (*Albany*) and could effectively recommend discharge (*Northwoods*).

As previously noted, the Employer asserts the LPNs involvement in finding replacement employees reflects statutory supervisory authority, the evidence establishes that, with the exception of the day shift because the scheduler, DON and ADONs are present, LPN shift supervisors have the ability to ask staff to stay over and work another shift when there are shortages; and that such action can result in overtime pay. LPNs, according to Walton, may also call employees in to work another shift utilizing an established list of employees as a call list. In either situation, staying over or coming in for another shift, the called employee does so

voluntarily. Contrary to DON Fields' testimony, Flowers and Walton stated even when acting as shift supervisors that they must have approval from the manager (DON or ADON) or human resources manager before calling in outside agency pool employees. It is undisputed that the team leaders do not have authority to call in the outside agency pool employees. The record established that there are certain minimum staffing requirements and the LPN's decision on whether additional staff is needed does not require independent judgment, but is more in the nature of a clerical task. *Illinois Veterans Home at Anna LP*, 323 NLRB 890 (1997). Likewise, the authority to call in replacements from a list of employees; to request, but not require, employees to work overtime; to transfer CNAs to different units as warranted by the circumstances; to initial timecards and verify attendance records; or to request CNAs to postpone or reschedule breaks in order to ensure adequate staff coverage, involves only the exercise of routine judgment and does not make them a statutory supervisor. *Washington Nursing Home*, 321 NLRB 366, 378 (1996).

Discipline:

I conclude that the Employer has not established that shift supervisors have issued discipline. Most of the documentary evidence presented pre-dates the instant proceedings by 4 to 10 years, with the exception of Flowers' August 1999 verbal counseling which she issued only at the direction of her RN manager. I conclude that these earlier examples of discipline are remote in time and not a reliable indication of current supervisory status. The discipline issued by ADONs Maroney and Staszak (Er. Exhs. 54 and 58), even if done so while serving as shift supervisors, appears to reflect their authority as ADONs. Additionally, ADONs Maroney's and Staszak's discipline Er. Exhs. 54 and 58, as well as those issued by former ADON Fleming apparently in her role as a shift supervisor Er. Exhs. 55 thru 57, all issued in January and February 2000. Arguably, those examples are entitled to less weight inasmuch as they may have

been generated to buttress the Employer's position in this remanded proceeding. If discipline is routinely issued by shift supervisors, I note the absence of any from non ADONs RN shift supervisors White or Hill, or LPN shift supervisors Walton or Stanford, the only recent example of LPN shift supervisor or team leader written discipline is Er. Exh. 11 issued by Flowers in August 1999.

LPN shift supervisor Walton, an employee since July 5, 1998, testified that she has spoken to a CNA to discuss direct patient care matters, and that she has issued a verbal counseling and a written verbal counseling (no dates given nor documentation entered into the record). While she stated that she can issue written warnings on her own but has never done so, Walton testified that she would have to consult with someone above her in the chain of command about doing written warnings.

The Employer asserts that the LPN shift supervisors and team leaders have the authority to independently issue verbal and written disciplinary warnings as set forth in their job descriptions. The record fails to disclose the frequency, timing or basis for actual discipline administered by the current LPN staff. While the Employer contends the LPNs' job descriptions give them the independent authority to issue verbal and written warnings, LPNs have no access to personnel files to determine what stage of the disciplinary process the warnings should reflect. Thus, it appears LPNs' "discipline" is predominately a reporting function. There is no evidence that the verbal written counselings given by Walton and Flowers contain any admonitions of future discipline should subsequent misconduct occur. There is no evidence in the record that I give any weight to that LPNs recommend discipline or that their reports automatically result in discipline being administered. As the Board has found, "authority to give employees oral warnings and also to write up warnings on forms retained in the employee's personnel file is typical in cases involving nursing-home charge nurses" *Ten Broeck Commons*, 320 NLRB 806,

812 (1996). The Employer argues that the mere possession of supervisory authority satisfies the statutory criteria, citing *Cox Enterprises*, 263 NLRB 632, 633 (1982). In *Cox*, the Board was satisfied that the route supervisors had the authority to hire, discipline, and fire their assistants as there were numerous instances where the route supervisors effectuated those personnel actions. Further, the Board stated that, “Although some route managers do not exercise the full extent of their authority, it is the possession of supervisory power, rather than the exercise of that authority that determines whether particular employees are supervisors.” I do not find the Employer’s reliance of *Cox* appropriate in the instant case. As set forth in *Chevron, U.S.A.*, supra, I do not find that the job descriptions given the LPNs in February and August 1999 bestow upon them the possession of supervisory power. Rather, this is at most theoretical power. There are insufficient recent tangible examples of the existence of that power.¹⁶

Evaluation of Employees:

The Employer asserts LPNs (shift supervisors and team leaders) are vested with the authority to evaluate CNAs. The evidence, including DON Fields’ testimony, demonstrates that no RN nor LPN has completed the evaluation forms since DON Fields has been with the Employer. Without evidence that the authority has been exercised, there is at best a claim of theoretic power; this is insufficient to establish supervisory powers. *Chevron U.S.A.*, supra. The documents of CNA evaluations introduced by the Employer at its Exhs. 33-36 occurred between 1989 and 1995 are remote in time and do not reflect the present circumstances. *First Healthcare Corp.*, 323 NLRB 1171 (1997) cited by the Employer is distinguishable inasmuch as the record reflected that the LPNs actually completed probationary evaluation forms. There is no evidence

¹⁶ I do not find that Er. Exh. 6 demonstrates that an LPN supervisor completed a written warning to a CNA. The form is a narrative, contains no recommendation, and was ultimately signed by DON Fields, not Dawson. Contrary to the Employer’s interpretation of *Evangeline of Natchitoches, Inc.*, I find Dawson’s written narrative is reportorial and demonstrates the exercise of Dawson’s technical knowledge, rather than her responsibilities. *NLRB v. Grancare, Inc.*, 323 NLRB No. 85 (1997), enfd, 170 F.3d 662 (7th Cir. 1999).

to demonstrate that the LPNs have, in fact, completed any evaluations since DON Fields began working at the Employer's facility.

Adjustment of Grievances:

The Employer asserts that, as detailed in their job descriptions and training sessions, the LPNs are responsible for attempting to resolve complaints and grievances. While LPN shift supervisor Walton testified that she imagined she had authority to resolve grievances, she has never been involved in that process. There is no evidence that any of the RNs or LPN shift supervisors or team leaders have been involved in the adjustment of grievances. Again, without something more, a job description does not vest employees with these supervisory powers. The fact that the Employer has provided its LPNs with supervisory training is not sufficient to confer them with supervisory status. *Chevron, U.S.A. supra.*

Additional Factors:

Outside Agency Pool Employees:

As noted previously, the Employer utilizes the services of outside agency pool RN and LPN nurses who fill in as shift supervisors and team leaders. The Employer asserts that they have the same authority over the CNAs in their units as the Employer's own employees. However, there is no evidence that the Employer has conducted supervisory training sessions with the outside agency pool nurses as to their supervisory authority over the employees in their units.

Supervisory to Employee Ratios:

Finally, if the LPN shift supervisors and team leaders are found to be statutory supervisors, the ratios of supervisors to employees would be extremely high. In addition to the DON, there are 5 RNs (3 of whom are ADONs), 5 LPNs to "supervise" and 30 CNAs. It is conceded that 4 of them are statutory supervisors (the DON and 3 ADONs), 30 are employees,

and the 5 LPNs acting as shift supervisors and team leaders are in the middle. If the LPNs are not supervisors, then the ratio of supervisors to non-supervisors is 4¹⁷ to 37, or about 9 percent of the workforce that are supervisors. On the other hand, if the 5 LPNs are supervisors, (along with the 2 non ADON RNs), then the ratio of supervisors to non-supervisors is 11 to 30, or one third of the staff are supervisors. Such a high ratio of supervisors to employees “raises a warning flag,” *NLRB v. American Med. Servs., Inc.*, 705 F.2d 1472, 1473 (7th Cir. 1983).

CONCLUSIONS AS TO SUPERVISORY STATUS

The following discussion from *NLRB v. Grancare*, supra 170 F.3d at 667, 668, aptly summarizes my conclusions in this matter:

The concept of “independent judgment” under Sec. 2(11) is, at its core, concerned with those who work at the margins of supervisory authority. The Board must draw a line separating the lowest level of true supervisors—those who are part of the management’s team—from those valuable employees who are just on the other side of the line. Those just on the other side of the line are employees who exercise some authority but not enough to be considered more than part of the regular work force. See *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 280-81, 94 S. Ct. 1757 (1974). . . . The record before the Board supports the conclusion that although GranCare’s LPNs have some assignment, scheduling, and disciplinary powers over CNAs, they exercise those powers in fairly routine, preordained ways. They act more like “straw bosses” than foremen. We cannot say that the Board’s understanding of the concept of “independent judgment” is arbitrary or capricious, or that the application of that understanding to GranCare’s LPNs as a factual matter is without evidentiary support. The Board’s view also results, as we just noted, in a more realistic boss-to-worker ratio, which is further evidence of the merit of its interpretation of the concept of “independent judgment.”

Based upon all of the foregoing, I conclude that the LPN shift supervisors and team leaders are employees within the meaning of the Act and are entitled to vote in the election that I am directing.

¹⁷ The above analysis reflects the two non ADON RN shift supervisors as being employees along with their LPN counterparts. The analysis does not account for the supervisory role played by the administrator or human resources department.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by District 1199W/United Professionals for Quality Health Care, Service Employees International Union.

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to the list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 384 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB No. 357 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer shall file with the

undersigned, **two** copies of an election eligibility list, containing the **full** names (including first and last names) and addresses of all the eligible voters, and upon receipt, the undersigned shall make the list available to all parties to the election. To speed preliminary checking and the voting process itself, it is requested that the names be alphabetized. **In order to be timely filed, such list must be received in the Regional Office, Suite 700, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203 on or before March 20, 2000.** No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, N.W., Washington, DC 20570. **This request must be received by the Board in Washington by March 27, 2000.**

Signed at Milwaukee, Wisconsin this 13th day of March 2000.

Philip E. Bloedorn, Regional Director
National Labor Relations Board
Thirtieth Region
Henry S. Reuss Federal Plaza, Suite 700
310 West Wisconsin Avenue
Milwaukee, Wisconsin 53203

177-8580-8050
393-6068-6067-3300
393-6068-8000

H/decwriting/dde/d306159.doc